

215/88

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. Lee STRICKLAND

2. C/FPD

3. 1107 Ames Bldg

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

STAT

2.



B

3. Gary

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4. Kim: Make up sop + file
entitled "Pending Legislation"

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

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Room No.—Bldg.

OCA

40012

OPTIONAL

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5 February 1988

NOTE TO: Chief Information and Privacy Division

FROM: Congressional Affairs

SUBJECT: Amendments to FOIA, HR 3885

1. Attached is a copy of subject bill introduced by Kleczka and English this week. It has been referred to the Gov't Ops Committee.

2. It will hurt us. Aside from the Administrative burden argument, I suggest you look at it from the standpoint of Agency exemptions and the DCI's special authorities, etc.

3. has also been sent a copy, and I have placed on the watch list. Let me know what you think needs to be done.

cc: Legislative Division, OCA

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*- reinstates Sabers test
ex (claims)
for
- Perfiles
- expands processing
- Adjust to oversee
and issue finding
@12/10/88*

Please enter NAME of desired report (or 'MENU').....stall

LEGI-SLATE Report for the 100th Congress

Fri, Feb 5, 1988 1:06pm (EST)

Status Report for H.R.3885
All Actions Since Introduction

Measure, Sponsor and Short Title:

H.R.3885 by KLECZKA (D-WI) -- Freedom of Information Act, Amendment

All Specified Actions:

02/01/88 -- In The HOUSE

Introduced by KLECZKA (D-WI)

Referred to HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Remarks by KLECZKA (D-WI) in "Congressional Record" (CR Page H-51)

Please enter NAME of desired report (or 'MENU').....off

LEGI-SLATE system signing off...

Total time signed on: 0 Hours, 10 Minutes, 7 Seconds

LOGOFF AT 12:57:41 EST FRIDAY 02/05/88

\$\$\$83 call cleared remote directive

LEGI-SLATE Report for the 100th Congress

Fri, Feb 5, 1988 1:00pm (EST)

Report for H.R.3685 Freedom of Information Act, Amendment

As introduced in the House

Complete Text of this version

I

100th CONGRESS
2d Session

H. R. 3885

To amend the Freedom of Information Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
February 1, 1988

Mr. Kleczka (for himself and Mr. English) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Freedom of Information Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Information Public Improvements Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that--

(1) the Freedom of Information Act has served an essential role in informing the public on the activities of the Federal Government; identifying and deterring Government waste, abuse, wrongdoing, and mismanagement; and disclosing significant information regarding public health and safety, and the environment;

(2) the cost to the Federal Government of compliance with the Freedom of Information Act has been far outweighed by the public benefits resulting from the Act;

(3) executive actions unreasonably limiting the public disclosure of information generated, collected, and maintained by the Federal Government have increased the need for a strong and effective Freedom of Information Act; and

(4) amendments are needed to make the Freedom of Information Act simpler and less expensive for noncommercial interests and news organizations to use, to provide for more meaningful sanctions for its violation, to minimize delays in processing requests under the Act, to discourage misuse of the Act's exemptions by agencies and agency personnel, to eliminate exemptions from the Act that serve no legitimate governmental purpose, to provide for more effective Congressional review of proposed exemptions to the Act, and otherwise to ensure and enhance the effectiveness of the Act.

TITLE I--AMENDMENTS TO THE FREEDOM OF INFORMATION ACT

SEC. 101. RECORDKEEPING REQUIREMENTS.

(a) Log of Requests and Responses.--Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(7) Each agency shall maintain for public inspection (A) a log of

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States Code, is amended by adding at the end thereof the following new subsection:

"(4) Each agency shall organize and maintain its records in a manner which will--

"(1) make records easily accessible for convenient use under this section; and

"(2) minimize the cost and difficulty of identifying and retrieving records under this section."

SEC. 102. FEES AND WAIVERS.

Section 552(a)(4)(A) of title 5, United States Code, is amended--

(1) in clause (ii)(II), by striking out "or a representative of the news media;" and inserting the following: "a representative of the news media; or a nonprofit organization that intends to make the information available to the news media, to any branch or agency of Federal, State, or local government, or to the public;";

(2) in clause (iii)--

(A) by inserting "(I)" after "if"; and

(B) by inserting before the period at the end thereof the following: "; (II) the information relates to a violation of law, inefficiency, or administrative error by an agency; or (III) the waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public";

(3) by redesignating clause (vii) as clause (viii); and

(4) by inserting after clause (vi) the following:

"(vii) For purposes of clauses (ii) and (iii), the publication, reproduction, resale, or other dissemination of information obtained by any person under this section from an agency is not a commercial use."

SEC. 103. PENALTIES FOR AGENCY DELAY OR AGENCY FAILURE TO COMPLY.

(a) Payment of Requester's Expenses.--Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The court may assess against the United States all out-of-pocket expenses incurred by the requester, and reasonable attorney fees incurred in the administrative process, subsequent to the failure of any agency to comply with the applicable time limit provisions of paragraph (6) of this subsection."

(b) Civil Penalty for Delay.--Such section is further amended--

(1) by inserting "(i)" after "(E)"; and

(2) by adding at the end thereof the following:

"(ii) Any agency not in compliance with the time limits set forth in this subsection shall demonstrate to a court upon motion by a requester in the venue of the requester of the information that the delay is warranted under the circumstances. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the Government fails to sustain this burden. In addition, it shall be within the discretion of the court to award the requester an amount not to exceed twenty-five dollars for each day that the agency's response to his request exceeded the time limits set forth in paragraph (6) of this section."

SEC. 104. SANCTIONS FOR AGENCY FAILURE TO COMPLY.

Paragraph (4)(F) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(F) Whenever the court issues a written finding that circumstances raise questions whether agency personnel acted arbitrarily or capriciously with respect to (i) the withholding, destruction, removal, or alteration of a record that was requested under this section, (ii) an estimate or amount of a fee or the denial of a fee waiver or reduction, or (iii) the denial of a request for expedited access, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible. After investigation and consideration of the evidence submitted, the Special Counsel shall, within six
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authority of the agency concerned and shall send copies of the findings and
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the requester, the Committee on Government Operations of the House of
Representatives, and the Committee on the Judiciary of the Senate. The
administrative authority shall promptly take the corrective action that the
Special Counsel recommends and file a report with each such Committee."

SEC. 105. EXPEDITED ACCESS.

Paragraph (6) of section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(D) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that upon receipt of a request for expedited access to records and upon demonstration by the requester of a compelling need for expedited access to records, the agency shall determine within five days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request for expedited access whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination. A requester whose request for expedited access has not been decided within five days of its receipt by the agency or has been denied shall not be required to exhaust administrative remedies. An agency failing to comply with this time limitation shall be subject to the provisions of section 552(a)(4)(E)(ii)."

SEC. 106. SEPARATE QUEUES FOR PROCESSING REQUESTS.

Paragraph (6) of section 552(a) of title 5, United States Code, is further amended by adding at the end thereof the following new subparagraph:

"(E) Each agency shall include, as part of the regulations implementing this section, pursuant to notice and receipt of public comment, a detailed description of the procedures used in the processing of requests under this section. If a separate queue or a special procedure is used in the processing of some categories of requests, the description shall identify the queue or procedure and shall specify the criteria used for differentiating between requests."

SEC. 107. REVISION OF EXEMPTIONS.

(a) Revision of Classified Information Exemption.--Paragraph (1) of section 552(b) of title 5, United States Code, is amended to read as follows:

"(1) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are--

"(A) in fact properly classified pursuant to such Executive order,

"(B) matters the disclosure of which could reasonably be expected to cause identifiable damage to the national defense or foreign policy interests of the United States, and

"(C) matters in which the need to protect the information outweighs the public interest in disclosure."

(b) Revision of Exemption for Internal Personnel Rules and Practices.--Paragraph (2) of such section is amended to read as follows:

"(2) law enforcement manuals that are predominantly internal in nature to the extent that disclosure significantly risks circumvention of an agency investigation, a regulation or a statute;"

(c) Revision of Financial Reports Exemption.--Paragraph (8) of such section is amended to read as follows:

"(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions if disclosure would directly injure the financial stability of an institution; or"

(d) Reporting on Use of Statutory Exemptions under Subsection

(b)(3).--Paragraph (1) of section 552(a) of title 5, United States Code, is amended--

(1) by striking out "and" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and"; and

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(e) Reporting on Proposed Statutory Exemptions.--Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) An agency, upon receipt of notification of the introduction of any bill or resolution into the Senate or House of Representatives constituting authority for that agency to withhold information under subsection (b)(3) of this section shall promptly notify the Committee on Government Operations of the House of Representatives and the Committee on the Judiciary of the Senate, unless the agency determines that written notice has otherwise been given to each such Committee."

SEC. 108. PROHIBITION ON USE OF ACT TO WITHHOLD INFORMATION TO CONCEAL VIOLATIONS OF LAW, INEFFICIENCY, OR ADMINISTRATIVE ERROR.

Section 552(c) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "This section is not authority to withhold information in order to conceal violations of law, inefficiency, or administrative error by an agency."

SEC. 109. OVERSIGHT OF AGENCY COMPLIANCE.

Subsection (d) of section 552 of title 5, United States Code, is amended to read as follows:

"(d)(1) The Archivist of the United States shall supervise agency compliance with the Freedom of Information Act. The Archivist may issue interpretations binding on other agencies pursuant to this section and provide advisory opinions to agencies and requesters.

"(2) On or before December 1 of each calendar year, each agency shall, in accordance with standards promulgated by the Archivist, submit a report covering the preceding fiscal year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

"(A) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

"(B) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(C) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

"(D) the results of each proceeding conducted pursuant to subsection (a)(4)(E), including a report of the disciplinary action taken, or an explanation of why disciplinary action was not taken;

"(E) a copy of every change in any rule made by such agency regarding this section;

"(F) the total amount of fees collected by the agency for making records available under this section;

"(G) the number of fee waivers requested and the number of fee waiver requests granted;

"(H) the number of requests received, processed, and pending at the end of the year;

"(I) the average length of time to comply with a request and with an appeal;

"(J) the number of requests and appeals that were responded to within the time limits specified in this section and the number that were not;

"(K) other information required by the Archivist;

"(L) any other information indicating efforts to administer fully this section; and

"(M) if an agency maintains a separate queue for some categories of requests, a separate statement of the information required by subparagraphs (H), (I), (J), and (K) of this paragraph shall be included with respect to each such queue.

listing of the number of cases arising under this section, the exemption

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penalties assessed under subsections (a)(4)(E) and (F). Such report shall also include an explanation of the interpretations issued during the preceding year pursuant to paragraph (1) of this subsection and a description of the efforts undertaken by the National Archives and Records Administration to encourage agency compliance with this section."

(b) Notwithstanding the amendment made by subsection (a) of this section, the reports required by section 552(d) of title 5, United States Code--

(1) shall be submitted on March 1, 1989, and shall cover the preceding calendar year; and

(2) shall be submitted on December 1, 1989, and shall cover the period from January 1, 1989, through September 30, 1989.

SEC. 110. DEFINITIONS.

Subsection (e) of section 552 of title 5, United States Code, is amended to read as follows:

"(e) For purposes of this section--

"(1) the term 'agency' includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency and includes the Smithsonian Institution, the Council of Economic Advisors, and Administrative Office of the United States Courts;

"(2) the term 'record' includes an appointment calendar and a telephone log of an officer or employee of an agency unless such calendar or such log is personally maintained by the officer or employee solely for his own use."

TITLE II--RECOVERY OF WRONGFULLY REMOVED AGENCY FILES

SEC. 201. PRIVATE CIVIL ACTIONS TO RECOVER AGENCY RECORDS REMOVED IN VIOLATION OF CHAPTER 29 OF TITLE 44, UNITED STATES CODE.

Section 2905 of title 44, United States Code, is amended by designating the existing paragraph as subsection (a) and by adding at the end thereof the following new subsection:

"(b)(1) Except as provided in paragraphs (2) and (3), any person may commence a civil action on his own behalf against any person (including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in possession of any records removed from an agency in violation of the provisions of this chapter or of standards, procedures, or guidelines promulgated pursuant to such provisions. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order the return of any such records or to issue any other orders necessary to obtain compliance with such provisions, standards, procedures, or guidelines.

"(2) No action may be commenced under paragraph (1) prior to sixty days after the plaintiff has given notice of the alleged violation (A) to the Archivist, (B) to the head of the agency from which such records are alleged to have been removed, (C) to the Attorney General, and (D) to the person who is alleged to have custody of such records.

"(3) No action may be commenced under paragraph (1) if, within sixty days after receipt of the notice required by paragraph (2), the Attorney General commences and is diligently prosecuting an action for the recovery of the records to which such notice pertains, but if such an action is instituted the person giving such notice may intervene as a matter of right in such action.

"(4) In any action under this subsection, the Archivist, if not a party, may intervene as a matter of right.

"(5) The court, in issuing any final order in any action brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate."

"(b)(1) Except as provided in paragraphs (2) and (3), any person may commence a civil action on his own behalf against any person (including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in possession of any records removed from an agency in violation of the provisions of this chapter or of standards, procedures, or guidelines promulgated pursuant to such provisions. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order the return of any such records or to issue any other orders necessary to obtain compliance with such provisions, standards, procedures, or guidelines.

"(2) No action may be commenced under paragraph (1) prior to sixty days after the plaintiff has given notice of the alleged violation (A) to the Archivist, (B) to the head of the agency from which such records are alleged to have been removed, (C) to the Attorney General, and (D) to the person who is alleged to have custody of such records.

"(3) No action may be commenced under paragraph (1) if, within sixty days after receipt of the notice required by paragraph (2), the Attorney General commences and is diligently prosecuting an action for the recovery of the records to which such notice pertains, but if such an action is instituted the person giving such notice may intervene as a matter of right in such action.

"(4) In any action under this subsection, the Archivist, if not a party, may intervene as a matter of right.

"(5) The court, in issuing any final order in any action brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate."

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